

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AHMAD MUKHTAR FAIZI, an individual
and derivatively on behalf of FALAFEL
FLAME, INC.,

Plaintiff,

v.

BAKTASH TEMORI, et al.,
Defendants.

Case No. 22-cv-04224-VKD

**ORDER DENYING PLAINTIFF'S
THIRD MOTION RE CONTEMPT**

Re: Dkt. No. 80

I. BACKGROUND

Plaintiff Ahmad Mukhtar Faizi filed a “Verified Shareholder Derivative Complaint for Money Damages and Injunctive Relief,” seeking relief for himself and on behalf of nominal defendant Falafel Flame, Inc. (“Falafel Flame”), against two of Falafel Flame’s directors, Baktash Temori and Masoud Rustakhis, as well as a number of entities, including allegedly unauthorized Falafel Flame restaurants.

On August 18, 2023, the Court held a hearing on the parties’ July 29, 2023¹ joint discovery letter brief concerning Mr. Faizi’s document requests. *See* Dkt. Nos. 73, 76. While defendants acknowledged that Mr. Faizi had not received discovery that was overdue, Mr. Faizi was also not diligent in pursuing discovery. *See* Dkt. No. 77 at 6-7. Nevertheless, based on the discussion at the hearing, it appeared that there was a possibility for completing some discovery based upon an agreement of the parties. Accordingly, the Court issued an order for the parties to confer about which documents should be given priority for production. Defendants were ordered to “complete

¹ The deadline for bringing discovery matters before the Court was July 28, 2023. Civil L.R. 37-3.

1 their production of all responsive, non-privileged documents” by September 15, 2023. If Mr.
2 Faizi chose to proceed with depositions of Mr. Temori or Mr. Rustakhis (or both), then the
3 depositions were to be completed by October 6, 2023. *See id.* at 7.

4 Now before the Court is Mr. Faizi’s third motion for an order holding defendants in
5 contempt. Dkt. No. 80. Mr. Faizi contends that defendants’ document production fails to comply
6 with this Court’s August 18, 2023 discovery order. Mr. Faizi asks that the Court order defendants
7 to (1) pay attorneys’ fees and costs “as compensation for compelling Defendants to participate in
8 . . . discovery”; (2) pay fines of \$100 per day until they can demonstrate meaningful compliance
9 with the Court’s discovery order; and (3) submit sworn affidavits detailing their efforts to comply
10 with the Court’s discovery order. Defendants did not file a written response to the motion, but
11 their counsel appeared at the November 7, 2023 hearing. Upon consideration of the moving
12 papers, as well as the oral arguments presented, the Court denies Mr. Faizi’s motion for an order
13 of contempt.

14 **II. DISCUSSION**

15 A district court has the inherent authority to enforce compliance with its orders through a
16 civil contempt proceeding. *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821,
17 827-28 (1994). Civil contempt “consists of a party’s disobedience to a specific and definite court
18 order by failure to take all reasonable steps within the party’s power to comply.” *In re Dual-Deck*
19 *Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993); *see also Gen. Signal*
20 *Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1379 (9th Cir. 1986) (“Civil contempt occurs when a party
21 fails to comply with a court order.”).

22 “The standard for finding a party in civil contempt is well settled: ‘The moving party has
23 the burden of showing by clear and convincing evidence that the contemnors violated a specific
24 and definite order of the court.’” *Fed. Trade Comm’n v. Affordable Media, LLC*, 179 F.3d 1228,
25 1239 (9th Cir. 1999) (quoting *Stone v. Cty. & Cnty. Of San Francisco*, 968 F.2d 850, 856 n.9 (9th
26 Cir. 1992)). “‘The burden then shifts to the contemnors to demonstrate why they were unable to
27 comply.’” *Id.* (quoting *Stone*, 968 F.2d at 856 n.9). “The contempt need not be willful.” *In re*
28 *Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d at 695 (internal quotation marks and

1 citation omitted). However, contempt sanctions are not warranted where the nonmoving party's
 2 action "appears to be based on a good faith and reasonable interpretation" of the court's order. *Id.*
 3 (quoting *Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982)).
 4 Additionally, "[s]ubstantial compliance with the court order is a defense to civil contempt, and is
 5 not vitiated by a few technical violations where every reasonable effort has been made to
 6 comply.'" *Id.* (quoting *Gen. Signal Corp.*, 787 F.2d at 1378-79).

7 Thus, Mr. Faizi must demonstrate by clear and convincing evidence that (1) defendants
 8 violated a court order, (2) the noncompliance was more than a technical or de minimis violation,
 9 and (3) defendants' conduct was not based on a good faith and reasonable interpretation of the
 10 violated order. *Facebook, Inc. v. Power Ventures, Inc.*, No. 08-CV-05780-LHK, 2017 WL
 11 3394754, at *8 (N.D. Cal. Aug. 8, 2017) (citing *United States v. Bright*, 596 F.3d 683, 694 (9th
 12 Cir. 2010)).

13 Mr. Faizi's motion for an order of contempt recites, at a very high level, that in response to
 14 approximately 986 document requests, defendants produced 46 documents, most of which pertain
 15 to the Blaze defendants, and the remaining documents "do not even account for each entity
 16 currently operating." Dkt. No. 80 at 5. Additionally, Mr. Faizi says that there are no documents
 17 relating to the Falafel Flame San Jose location or to Mr. Temori or Mr. Rustakhis. *Id.* His counsel
 18 summarily states that the parties conferred, but the negotiations did not result in "a definitive plan
 19 for the production of additional discovery documents," and no additional documents were
 20 produced. Dkt. No. 80-1 ¶¶ 9-12.

21 Mr. Faizi fails to identify in sufficient detail matters that would inform the Court's
 22 determination of whether there has been a violation of the August 18, 2023 discovery order,
 23 including which specific document requests are at issue, what categories of information have been
 24 produced, and what additional categories of responsive documents that Mr. Faizi believes exist
 25 have not been produced. While defendants' counsel acknowledged at the hearing that it was
 26 "possible" additional responsive documents exist and have not been produced, the Court cannot
 27 determine from the record presented by Mr. Faizi whether defendants' production has fallen short
 28 of "substantial compliance" with the Court's August 18, 2023 discovery order. Moreover, Mr.

1 Faizi had ample opportunity in discovery to seek the production of documents he believes he
2 needs, but he was not diligent in seeking this relief.

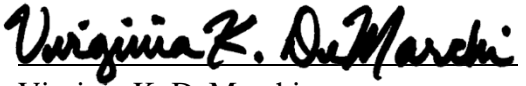
3 In sum, Mr. Faizi has not met his burden to establish, by clear and convincing evidence,
4 that defendants violated the August 18, 2023 discovery order warranting a finding of contempt or
5 the magnitude of sanctions sought.²

6 **III. CONCLUSION**

7 Based on the foregoing, Mr. Faizi's third motion for an order holding defendants in
8 contempt is denied.

9 **IT IS SO ORDERED.**

10 Dated: November 13, 2023

11 
12 Virginia K. DeMarchi
13 United States Magistrate Judge
14
15
16
17
18
19
20
21
22
23
24
25
26

27 ² In any event, Mr. Faizi previously represented to the Court that he is prepared to move for
28 default judgment on the Lanham Act claim (claim 1), even without discovery from defendants.
The Court separately addresses defendants' litigation conduct in an order striking certain
defendants' answer and entering their default.